

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. T-07/08-302  
 )  
 Appeal of )

# INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Economic Services Division denying his application for VHAP. The issue is whether the petitioner lost his previous employer-sponsored insurance due to "loss of employment" within the meaning of the pertinent regulations. The following facts are not in dispute.

## FINDINGS OF FACT

1. Prior to February 2008 the petitioner was working and receiving medical insurance through his employer.
2. On or about February 17, 2008 the petitioner was placed on short-term disability leave by his employer and began receiving disability payments from his employer of \$1,290 a month. The petitioner remained eligible to continue his employer-sponsored health benefits subject to a premium payment of \$34.07 a week. It is not clear whether the petitioner's disability benefits were less than his former

rate of pay, or whether he was subject to any or less of a premium on his health benefits when he was actually working.

3. At any rate, the petitioner determined that he couldn't afford the premium, and his insurance was terminated effective February 17, 2008 when he failed to make any premium payments.

4. Sometime thereafter the petitioner applied for VHAP. It appears that the Department initially found the petitioner eligible as of April 25, 2008. However, in June 2008 the Department determined that the petitioner was ineligible for VHAP because he had had other insurance within 12 months prior to his application for VHAP. On June 16, 2008 the Department notified the petitioner that his eligibility for VHAP would end on June 27, 2008.

5. On or about June 6, 2008 the petitioner was found eligible for Social Security disability benefits of \$932 a month. There does not appear to be any dispute that the petitioner's temporary disability payments from his employer were "terminated" and that he was no longer considered "employed" as of that date.

6. There also does not appear to be any dispute that the petitioner's eligibility to receive employer-sponsored health benefits, even if he had been paying his premiums,

would have ended in June 2008 when he was determined fully disabled for purposes of Social Security benefits.

ORDER

The Department's decision is reversed.

REASONS

Section 4001.2 of the VHAP regulations includes the following eligibility requirements:

Uninsured or Underinsured

Individuals meet this requirement if they do not qualify for Medicare and have no other insurance that includes both hospital and physician services, and did not have such insurance within the 12 months prior to the month of application, unless they meet one of the following exceptions specified below.

(a) Exceptions related to loss of employer-sponsored coverage

Individuals who had coverage under another health insurance plan within the 12 months prior to the month of application meet this requirement if their employer-sponsored coverage ended because of:

- loss of employment. . .

In this case, the Department has apparently determined the following: (1) that the petitioner did not suffer a "loss of employment" when he was placed on short-term disability status in February 2008; (2) that the petitioner's employer-sponsored insurance ended *only* because the petitioner failed

to make the required premium payments when he was placed on short-term disability status, *regardless of whether there had been a reduction in his income and/or an increase in his health care premiums*, in February 2008; and (3) that the one-year disqualification period in the above regulation applies *regardless of whether an intervening event occurs that would have made the petitioner eligible for VHAP even if he had not previously terminated his other insurance coverage*. It is concluded that all three positions constitute an overly restrictive reading of the above regulation.

The starting point of analysis is the fact that the VHAP program is remedial, and that its provisions regarding eligibility require liberal interpretation. See *Littlefield v. D.E.T.*, 145 Vt. 247 (1984); Fair Hearing No. S-03/08-135. The petitioner maintains that he dropped his employer-sponsored insurance in February because he could not afford the premium once he went onto short-term disability status. There is no dispute that the petitioner stopped working in February 2008. Assuming that he suffered a loss of income and/or an increase in his health care premiums when he went on short-term disability status, it must fairly and reasonably be concluded that he suffered a "loss of employment" at that time within the meaning of the above

regulation sufficient to cause the loss of his employer-sponsored insurance. Thus, the Department's initial determination of eligibility for VHAP in April 2008 appears to have been correct.

Even if it was not, however, there is no question that *all* aspects of the petitioner's "employment" ended in June 2008 when he was found totally disabled and began receiving Social Security benefits. Thus, even if the petitioner had paid the health care premiums during the months he was receiving short-term disability benefits from his employer, it appears he would have lost this insurance as of June 2008 when his "employment" was fully ended, *and he would have become eligible for VHAP at this time*. At its most restrictive, W.A.M. § 4001.2 imposes a waiting period, not a penalty. To *penalize* the petitioner for a full year for having dropped his employer-sponsored insurance in February, something he could have done with impunity in June, is clearly beyond the meaning and intent of the regulation.

For all the above reasons, the Department's decision to terminate the petitioner's VHAP coverage effective June 27, 2008 is reversed.

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